THE HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.25913 OF 2005

DATED: 15.11.2006

Between:

K. Veera Raghavulu and others

….Petitioners

AND

A.P.Co-operative Tribunal, Hyderabad
represented by its Chairman
and others

…Respondents

THE HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.25913 OF 2005

ORDER:

This writ petition is filed being aggrieved by the order dated 24.01.2005 made in C.T.A.No.200 of 2002 on the file of the A.P. Co-operative Tribunal, Hyderabad, wherein the order passed by the second respondent dated 07.11.2002, in Rc.No.584/2002 ECS superseding the Society under Section 34 (1) of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act") has been reversed.

It appears that the election to the third respondent society was held in the month of January, 2002 and unofficial respondents 4 to 8 were elected as office bearers of the society. While so, a show cause notice, dated 18.10.2002 was issued under Section 34 (1) of the Act calling for explanation of respondents 4 to 8 as to why, the society shall not be superseded. After receiving the explanation filed by the unofficial respondents and others, and after an elaborate consideration of the entire material placed before it, the second respondent-Divisional Co-operative Officer, Secunderabad Division, Hyderabad by virtue of the powers vested in him under Section 34 (1) of the Act, ordered supersession of the Managing Committee of the A.G. Office Staff Coop. Credit Society Limited, Hyderabad with immediate effect. Aggrieved by the same, the unofficial respondents filed appeal in C.T.A.No.200 of 2002 before the A.P. Cooperative Tribunal, Hyderabad. The A.P. Cooperative Tribunal, however, reversed the findings of the second respondent-primary authority and set aside the impugned order of supersession dated 07.11.2002. Aggrieved by the same, some of the members of the society have filed the present writ

petition.

The primary authority i.e., the second respondent herein noticed that the Auditor VSPN & Co., Chartered Accountant, who has conducted Statutory Audit of the Society for the year 2000-2001 has pointed out in the defects sheets and at defect No.13 suggested the society to withdraw call deposits from the Co-operative Banks immediately because certain frauds have come in recent times specially in Co-operative Urban Banks in the interest of the members of the society and the management has not withdrawn the call deposits from the Co-operative Banks and failed to rectify the defects pointed out by the Auditors. Due to willful violation of the managing committee of the society for not adhering to the defects pointed out by the auditor, the following call deposits from banks could not be recovered on time as they are either liquidated or under liquidation process or declared as weak banks for their non functioning whereas the society is bound to pay back the deposit amount to the members on its maturity.

1. Charminar Co-operative Urban Bank Rs.4.90 Crores
2. Sai CUB Rs.0.13 Crores
3. Manikanta CUB Rs.0.03 Crores
4. Bhavana Rushi CUB Rs.0.25 Crores
5. Mother Treas CUB Rs.0.25 Crores
6. Trinity CUB Rs.0.20 Crores
7. First City CUB Rs.0.15 Crores
8. Krishna CUB Rs.0.13 Crores
9. Jawahar CUB Rs.0. 20 Crores

Further, the Sub-Divisional Co-operative Officer, Khairtabad also reported that the F.Ds are to be paid on demand or otherwise on non receipt of the above investments due to dangerous consequences of the increasing liquidation of Banks in Co-operative Sector, the Society cannot meet with the demand of Fixed Deposit holders as the Managing Committee of the Society issued 7 crores on Housing Loans to its members violating the provisions of Byelaws and recovery

of 6.26 crores investment in the above Co-operative Urban Banks is not easy. Thus, the Managing Committee of the Society violated the provisions of A.P.C.S. Act, Rules, Byelaws and Lawful directions issued by the Registrar of Co-operative Societies, Andhra Pradesh, Hyderabad and District Co-operative Officer, Hyderabad.

The Managing Committee members, who received the notices have also filed explanation before the primary authority stating that the secretary is very reluctant to share any information with them. They have not got any reply either from the Secretary or from the President. The President and Secretary are acting on their own and they are not made as a party to any of the decisions taken by them. The Secretary, Mr. C.H.V. Sai Prasad, has submitted his explanation dated 03.11.2002, which was received by the primary authority on 07.11.2002 stating that the Managing Committee of the society has not mismanaged the affairs of the society and they have not violated any law and present mismatch between receipts and payments would not lost long. All these aspects were considered by the primary authority and ultimately, came to the conclusion that the society has violated the lawful instructions issued by the authorities and therefore, the society is liable to be superseded under Section 34 (1) of the Act, whereas the appellate Authority allowed the appeal mainly on the ground that the show cause notices issued by the primary authority before passing the orders under Section 34 (1) of the Cooperative Societies Act were not received by the members. This seems to be not correct. As noticed by the primary authority, the Secretary represented the entire society and apart from that, 3 to 4 members of the managing committee also submitted explanation stating that the President and Secretary are not revealing any information to them and they are doing what they want to do and the President and Secretary were never made these people as a party to any of the decisions.

It may be further interesting to notice that the Managing

Committee collected deposits from members and non-members to a tune of Rs.26.90 crores as on 31.03.2002, out of which, 17.34 crores and surplus funds have been invested in the following banks contrary to the instructions issued by the higher authorities and the R.B.I.

1. Charminar Co-op. Urban Bank Ltd. 4.90 Crores
2. Vasavi Co-op. Urban Bank 1.13 Crores
3. A.P. Mahesh Co-op. Urban Bank 3.07 Crores
4. Prudential CUB 5.87 Crores
5. Sai CUB 0.15 Crores
6. Bharath Mercantile CUB 0.25 Crores
7. Manikanta CUB 0.03 Crores
8. Bhavana Rushi CUB 0.25 Crores
9. Mother Tresa CUB 0.25 Crores
10. Trinity CUB 0.20 Crores
11. First City CUB 0.15 Crores
12. Krishi CUB 0.12 Crores
13. Kalyan CUB 0.05 Crores
14. Jawahar CUB 0.20 Crores

Therefore, neither it can be said that no show cause notice was served on the members of the society or it can be said that the society has invested 17.34 crores of rupees with the consent and permission of the concerned authorities including Reserve Bank of India.

Under those circumstances, I am of the opinion that the primary authority-second respondent herein has rightly passed orders by invoking the powers under Section 34 (1) of the Act in superseding the society. The appellate authority, without properly considering the magnitude of the misconduct on purely technical grounds for non service of show cause notice, which cannot be said to be true in the light of the explanation given by the Secretary of the Society, has set aside the order.

Hence, I am of the opinion that the order passed by the appellate authority is not only contrary to the evidence on record but also perverse, and therefore, the same is liable to be set aside.

The Writ Petition is accordingly allowed. The order passed by the appellate authority is set aside and the order passed by the primary authority i.e., the second respondent is confirmed. No costs.

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15th November, 2006

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THE HONOURABLE SRI JUSTICE C.V.RAMULU

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